

## **PROGRESS REPORT NO. 10**

# **MICHIGAN COURT OF APPEALS DELAY REDUCTION PLAN**

October 6, 2004

### **Work Group Members:**

Judge Hilda R. Gage  
Chief Judge Pro Tem Michael R. Smolenski  
Chief Judge William C. Whitbeck, Chair  
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### **Contributing Judges:**

Judge Richard A. Bandstra  
Judge Jessica R. Cooper  
Judge Richard A. Griffin  
Judge Kirsten Frank Kelly  
Judge Patrick M. Meter  
Judge Michael J. Talbot  
Judge Helene N. White

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## I. EXECUTIVE SUMMARY

In March of 2002 the Michigan Court of Appeals adopted a long-range goal of disposing of all appeals filed with it within 18 months of filing, commencing with those cases filed on and after October 1, 2003. Since the Preliminary Report that signaled the inception of the Court's delay reduction plan, the Court has issued nine Progress Reports. This Progress Report No. 10 sets out data covering the third quarter of 2004, the months of July, August and September. The public can access the Preliminary Report and each of the ten progress reports on the Court's web site at <http://courtofappeals.mijud.net/resources/drwg.htm>.

To meet the Court's long-range goal of disposing of all appeals within 18 months of filing, the Court adopted two objectives:

- *First*, the Court determined that it would need to reduce the time to process an opinion case from its 2001 level of 653 days to approximately 497 days. The Court designed a number of actions, which took effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003, to meet this first objective.
- *Second*, the Court determined that it would then need to further reduce the time it takes to process an opinion case to approximately 300 days, commencing October 1, 2003. This, in essence, means that the Court must substantially reduce or eliminate the component in processing time that it calls the "Warehouse."

As this Progress Report indicates, in the third quarter of 2004, *it took 170 fewer days to move an opinion case through the Court than it did in the base year of 2001*. Thus, the Court has accelerated the progress toward delay reduction that it achieved in 2002 and 2003. *Indeed, the Court has reduced the time it takes to process an opinion case by over 25% in the past 33 months.*

In the presentation of the Court's budget proposals for FY 2004 (the fiscal year commencing October 1, 2003), the Court concentrated on the Warehouse stage of its processing and made the point that with modest increases in the staff in its Research Division, the Court could eliminate or substantially reduce the time that a case gathers dust in the Warehouse. The Court was, therefore, extremely pleased that as part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, the Court received approximately \$525,000 more in revenues in FY 2004 than it received in FY 2003. These funds have allowed the Court to increase its Research Division staff and complete the important work of drastically reducing or eliminating the Warehouse.

Indeed, that process is already well underway and the results to date have been extraordinarily positive. For opinion cases decided in the third quarter of 2004, there has been another significant decrease in overall average processing times:

### **Comparative Overall Processing Times**

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Third Quarter 2004</u>
653 Days	603 Days	554 Days	483 Days

*Thus, the average time to process an opinion case, from filing to decision, through the Court has decreased by 170 days when comparing the base year of 2001 to the third quarter of 2004. As expected, a significant portion of these time savings—121 of the 170 days—has been achieved in the Warehouse stage:*

**Comparative Overall Processing Times/Warehouse**

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Third Quarter 2004</u>
271 Days	261 Days	225 Days	150 Days

On October 5, 2004, the Supreme Court approved a plan developed by a joint bench/bar Case Management Work Group for management of civil cases at the Court that will cut approximately 70 days from the average time it takes to process an opinion case in its first year of operation. Pursuant to the Supreme Court's Administrative Order, the Court of Appeals will begin implementation of the plan on January 1, 2005.

As the Court has emphasized in previous progress reports, the Court's core mission is to resolve the cases pending before it with due deliberation *and* due speed. The Court's delay reduction plan will, as the Court implements its final elements over the coming months, ensure due speed through the significant reduction of delay on appeal.

## II. OVERVIEW

### A. Statement of the Problem

In 2001, the Court disposed of approximately 7,600 cases. Of these, the Court disposed of 3,100 cases by opinion and the rest by order. On average, the Court disposed of these opinion cases within 653 days from the date of filing. The Judges of the Court unanimously determined that this time frame was not within acceptable limits and therefore adopted a comprehensive delay reduction plan on March 8, 2002. The Court has subsequently issued nine progress reports detailing its progress on this plan. This tenth progress report covers the third quarter of 2004. All of the reports are available on the Court's website at: <http://courtofappeals.mijud.net/resources/drwg.htm>.

### B. Goals and Objectives

#### 1. *Long-Range Goal*

The Court's delay reduction plan involves an overall long-range goal and two shorter-term objectives designed to meet that goal. The long-range goal is to dispose of 95% of all the Court's cases within 18 months of filing, commencing with those cases filed on or after October 1, 2003.

#### 2. *First Short-Term Objective*

To achieve its long-range goal, the Court determined that it must first reduce the average time it takes to process an opinion case through the Court from its 2001 level of 653 days to approximately 497 days. To achieve this reduction, the Court has taken a three-pronged approach: *First*, the Court set very aggressive targets for disposing of cases once they reach the Judicial Chambers. *Second*, the Court, through a number of mechanisms, set equally aggressive targets for moving cases more quickly out of the Warehouse, primarily by moving these cases directly into the Judicial Chambers at a considerably accelerated pace. *Third*, the Court proposed a number of changes in the Court Rules to shorten the time in Intake. The Court designed these actions to take effect over the summer and fall of 2002 through the commencement of FY 2004 on October 1, 2003.

#### 3. *Second Short-Term Objective*

Reducing the overall processing time for opinion cases from its 2001 level of 653 days to approximately 497 days will not, however, permit the Court to meet its long-range goal of disposing of 95% of all cases within 18 months of filing. To achieve this long-range goal, the Court must reduce its overall average processing time for opinion cases to approximately 300 days. To achieve that reduction, the Court must eliminate or substantially reduce the time that opinion cases wait in Warehouse. That is the Court's second objective.

### III. RESULTS THROUGH THE THIRD QUARTER OF 2004 AS COMPARED TO FIRST OBJECTIVE

#### A. Processing Times of Opinion Cases

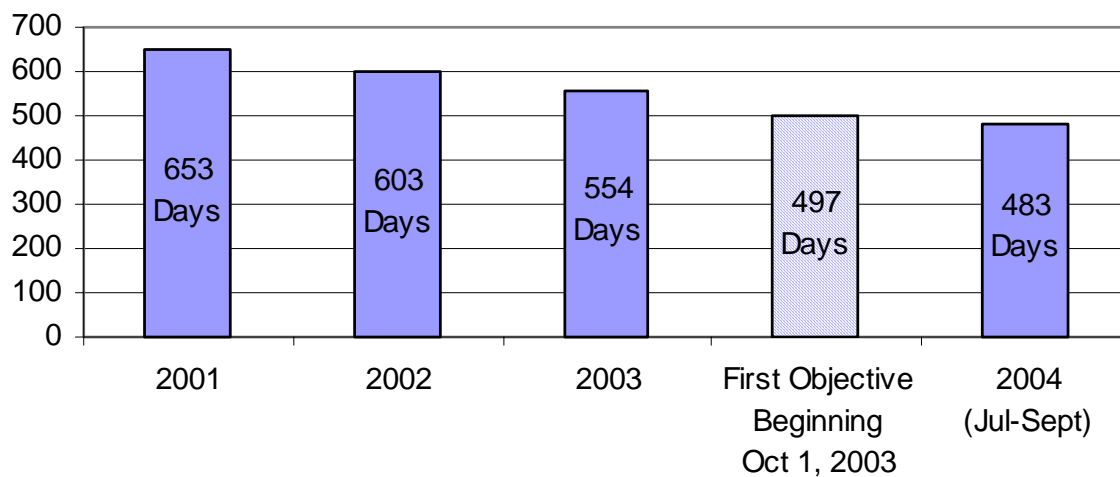
##### 1. *Overall*

As Chart 1 shows, in 2001 the Court took 653 days on average to dispose of an opinion case. In 2002, this time was 603 days and in 2003 it was 554 days. In the third quarter of 2004, this time was 483 days. Graph 1 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 1 shows, the Court has exceeded its first objective.

**Chart 1**

	2001	2002	2003	2004 Jul-Sept
Intake	260	240	235	228
Warehouse	271	261	225	150
Research	61	62	64	74
Judicial Chambers	61	40	30	31
Totals	653	603	554	483

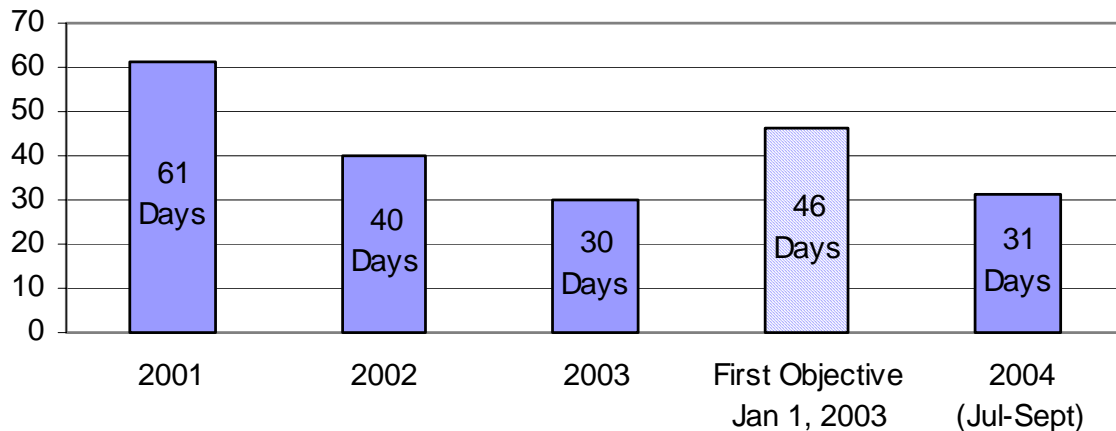
**Graph 1**  
**Overall Time In Processing Compared To First Objective**



## 2. *Judicial Chambers*

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in the Judicial Chambers was 61 days. In 2002, this time was 40 days and in 2003 it was 30 days. In the third quarter of 2004, this time was 31 days. As Graph 2 shows, the Court has exceeded its first objective.

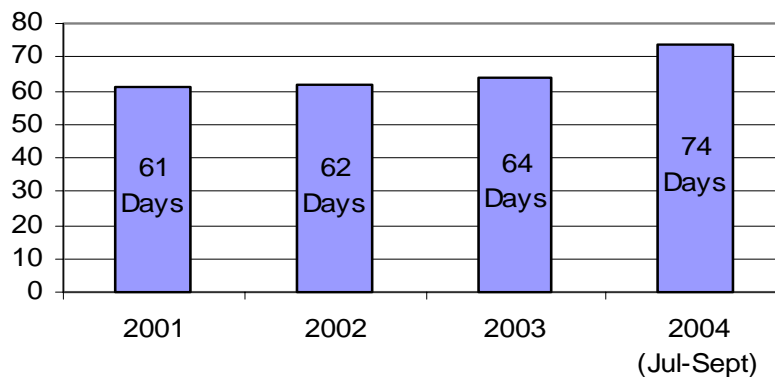
**Graph 2**  
**Processing Time In Judicial Chambers Compared To First Objective**



## 3. *Research*

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in the Research Division was 61 days. In 2002, this time was 62 days and in 2003 it was 64 days. In the third quarter of 2004, this time was 74 days. Graph 3 shows these times on a comparative basis.

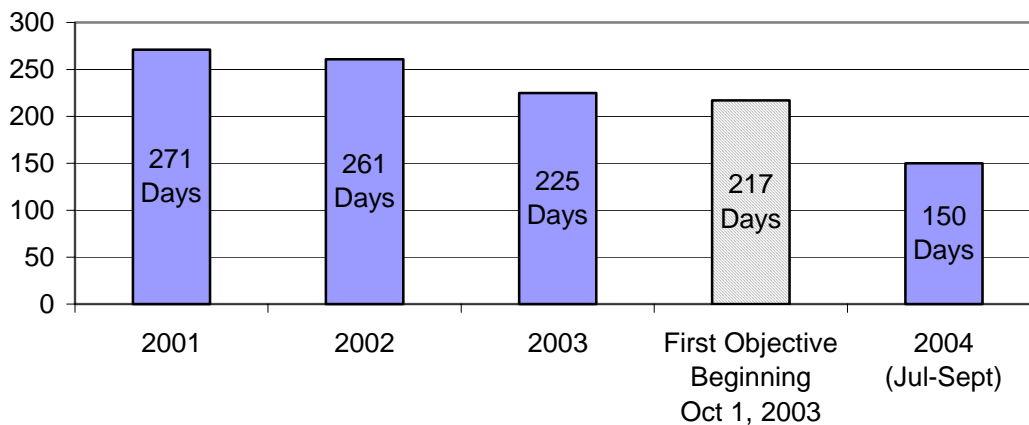
**Graph 3**  
**Processing Time In Research**



#### 4. Warehouse

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in the Warehouse was 271 days. In 2002, this time was 261 days and in 2003 it was 225 days. In the third quarter of 2004, this time was 150 days. Graph 4 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 4 shows, the Court has exceeded its first objective.

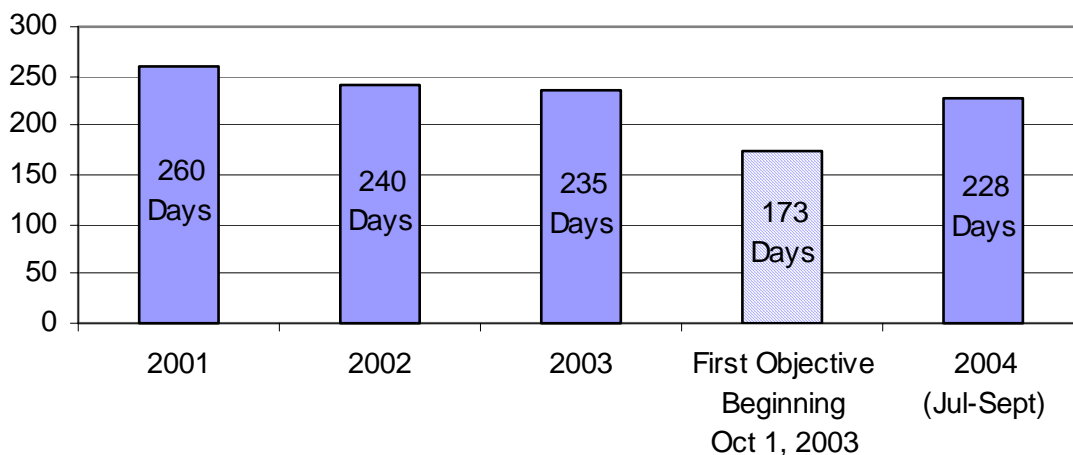
**Graph 4**  
**Processing Time In The Warehouse Compared To First Objective**



#### 5. Intake

As Chart 1 shows, in 2001 for those cases disposed of by opinion the time spent in Intake was 260 days. In 2002, this time was 240 days and in 2003 it was 235 days. In the third quarter of 2004, this time was 228 days. Graph 5 shows these reductions on a comparative basis and relates them to the Court's first objective. As Graph 5 shows, the Court has not yet met its objective.

**Graph 5**  
**Processing Time In Intake Compared To First Objective**



## **B. Case Differentiation**

Chart 2 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2001, arrayed according to major case types.

**Chart 2**  
**2001**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non- Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	260	271	229	280	192	187
<b>Warehouse</b>	271	290	214	331	60	56
<b>Research</b>	61	61	62	63	56	52
<b>Judicial Chambers</b>	61	72	27	66	43	30
<b>Total</b>	653	694	532	740	351	325

Chart 3 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2002, arrayed according to major case types.

**Chart 3**  
**2002**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non- Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	240	254	205	255	178	178
<b>Warehouse</b>	261	290	189	312	58	56
<b>Research</b>	62	59	69	61	66	67
<b>Judicial Chambers</b>	40	49	19	44	26	20
<b>Total</b>	603	652	482	672	328	321



Chart 4 shows the overall situation for cases that the Court disposed of by opinion for the full year of 2003, arrayed according to major case types.

**Chart 4**  
**2003**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non-Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	235	244	212	251	166	167
<b>Warehouse</b>	225	253	154	271	28	27
<b>Research</b>	64	63	64	63	66	67
<b>Judicial Chambers</b>	30	36	16	33	18	14
<b>Total</b>	554	596	446	618	278	275

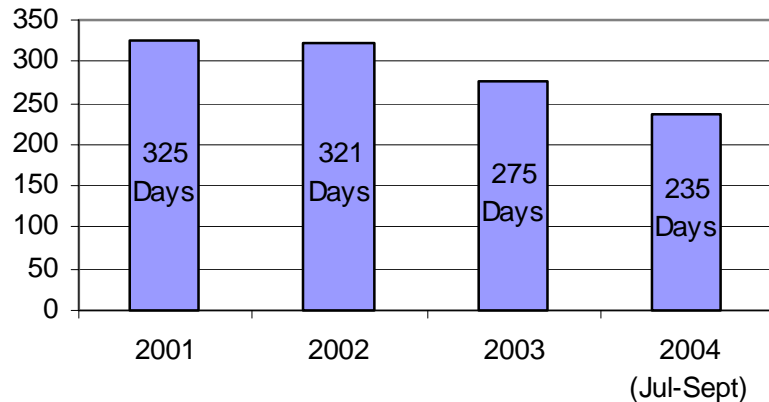
Chart 5 shows the overall situation for cases that the Court disposed of by opinion for the third quarter of 2004, arrayed according to major case types.

**Chart 5**  
**Third Quarter 2004**

	<b>Overall Average</b>	<b>Regular/ Complex</b>	<b>Summary</b>	<b>Non-Expedited</b>	<b>Expedited</b>	<b>Custody/TPR</b>
<b>Intake</b>	228	247	178	254	137	133
<b>Warehouse</b>	150	159	125	185	28	26
<b>Research</b>	74	77	69	79	58	58
<b>Judicial Chambers</b>	31	33	24	33	21	18
<b>Total</b>	483	516	396	551	244	235

The Court has also focused special attention on dependency appeals. These appeals arise from trial court orders terminating parental rights (TPR) and deciding custody issues involving minor children in domestic relations cases. In 2001, it took 325 days, on average, to dispose of such cases by opinion. As Chart 5, above, shows, the Court reduced this time to 235 days in the third quarter of 2004. Of that time, 133 days was spent in the Intake stage. The combined time for all other stages was 102 days, including only 18 days in the Judicial Chambers. Graph 6 shows the situation with respect to dependency appeals beginning in 2001 through the third quarter of 2004.

**Graph 6**  
**Dependency Appeals**



The Dependency Appeals Work Group published its final report in May 2003. See [http://courtofappeals.mijud.net/pdf/Dependency\\_Appeals\\_Final\\_Report\\_May\\_2003.pdf](http://courtofappeals.mijud.net/pdf/Dependency_Appeals_Final_Report_May_2003.pdf). The Court of Appeals submitted proposed rule amendments to the Supreme Court that it adopted on February 3, 2004. These rule amendments focus on appeals from TPR orders and address delay that occurs *after* entry of such orders and *through* final disposition of an appeal to this Court. The goal is to reduce the disposition time to a total of seven months (210 days). The recommendations of the Work Group will result in an average time of 195 days from the date of the order terminating parental rights through disposition by the Court of Appeals. And only 167 days of that period (highlighted below) will occur at the Court of Appeals:

Days		
Order of TPR	0	Day zero on timeline
Request for counsel	14	Current rule: MCR 3.977(I)(1)(c)
Form appoints counsel, orders transcripts, is claim of appeal	14	Current rule: MCR 3.977(I)(2)(a) and (b)
Receive claim of appeal	0	Receipt of claim occurs while transcripts are prepared
File transcripts	42	Due 42 days after ordered per MCR 7.210(B)(3)(b)(iii)
File AT brief	28	Current rule. MCR 7.212(A)(1)(a)(i)
File AE brief	21	Current rule. MCR 7.212(A)(2)(a)(i)
File record	14	Proposed amendment of MCR 7.210(G). ADM No. 2002-34
Send to research	7	Current policy
Complete report	28	Current policy
Submit on call	14	Policy approved in August 2003
Issue opinion	14	Average time at COA from January through June 2003
Total days	196	

In the fourth quarter of 2003, the Court hired additional contract attorneys with the delay reduction funding that the Legislature appropriated for FY 2004, so that dependency appeals can now receive research reports and be placed on call with virtually no delay. Further reductions in delay will occur if the Supreme Court adopts the proposed amendment of MCR 7.210(G), which

shortens the time for forwarding the lower court record to this Court from 21 days to 14 days. This proposal remains under consideration by the Supreme Court as part of Proposed Amendment File No. 2002-34 that was taken under advisement in Administrative Order No. 2003-6 dated November 4, 2003. And, although it will not affect the disposition time in this Court because it precedes the filing of the appeal, the amendment of MCR 3.977(I) will reduce the time it takes to file the appeal by establishing an automatic claim of appeal that also constitutes the order of appointment of counsel and the order for transcript production. It is estimated that this will save 21 days between the time of the termination order and the filing of the appeal. The net effect of these changes will be a reduction of time on appeal in TPR cases from the present average of 235 days to the projected average of 167 days.

### **C. Case Age**

As noted above, the Court decides a mix of cases, some by opinion and some by order. The Court's overall goal is to decide *all* of its cases within 18 months of filing (see table, below). While the Court is gratified at the increasing percentage of cases in its inventory that are 18 months old or less at disposition, the Court still must make considerable progress if it is to meet its long-term goal of deciding 95% of all its cases within 18 months of filing.

Percentage of Cases 18 Months Old Or Less At Disposition

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u> <sup>1</sup>
Opinion Cases	25.03%	33.31%	46.59%	66.39%
Order Cases	x <sup>2</sup>	97.36%	97.70%	98.18%
All Cases	y <sup>2</sup>	66.92%	74.43%	83.51%

## **IV. NEXT STEPS**

### **A. Increasing the Staff in the Research Division**

The Court recognized in March of 2002 that, given existing budget constraints, it was not realistic to expect that it could add new attorneys to its Research Division in either FY 2002 or FY 2003. Indeed, the Court actually experienced significant budget *reductions* during both of these fiscal years. Nevertheless, to meet its overall goal of disposing of 95% of all appeals within 18 months of filing, the Court must further reduce the time it takes to process an opinion case to approximately 300 days. In the presentation of its budget request for FY 2004, the Court emphasized that, in order to meet this goal, it must add attorneys to its Research Division and thereby drastically reduce or eliminate the Warehouse.

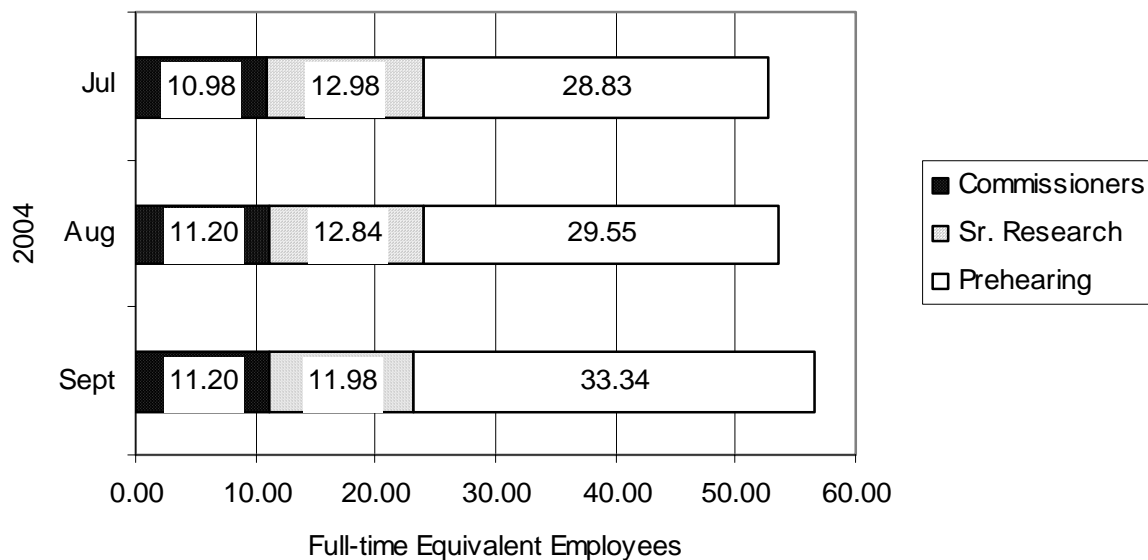
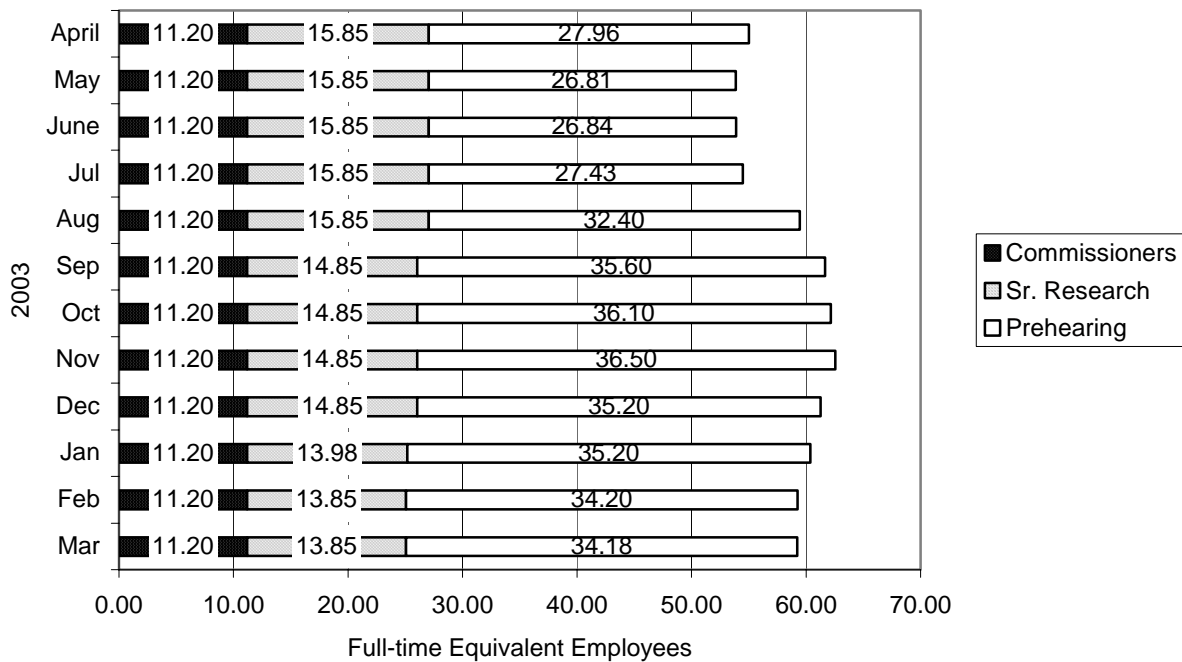
Fortunately, there was almost universal recognition of this urgent need. As part of an overall package of fee increase bills originated by the Supreme Court, supported by the Executive Branch, enacted by the Legislature, and signed by the Governor, the Court received approximately \$525,000 more in revenues in FY 2004 from entry and motion fees than it received in FY 2003. These funds have allowed the Court to increase its Research Division staff

<sup>1</sup> Through third quarter.

<sup>2</sup> These data are not readily available from the Court's database.

and this accounts for the dramatic decrease in the wait in the Warehouse through the third quarter of 2004.

**Graph 7**  
**Staffing Levels In Research Division**



## **B. Reducing the Time in Intake**

As the Court builds up its staff in the Research Division to drastically reduce or eliminate the time a case spends in the Warehouse, it also must address the problem of the delay in Intake. As noted above, in 2001, an opinion case spent 260 days on average in Intake. In 2002, that time was 240 days on average and in 2003 it was 235 days on average. The Court initially proposed to reduce the time a case spends in Intake to 173 days on average for those cases filed on or after October 1, 2003. The Court proposed to meet that objective through adoption of the various changes to the court rules. These proposed changes remain under consideration by the Michigan Supreme Court while, at the same time, a Case Management Work Group with members from the Supreme Court, the Court of Appeals, and the Bar, developed a plan for the management of civil cases at the Court. The plan that the Case Management Work Group submitted to the Supreme Court would, it is estimated, cut approximately 70 days from the average time it takes to process an opinion case in its first year of operation. On October 5, 2004, the Supreme Court approved that plan in Administrative Order No. 2004-5. Pursuant to the Administrative Order, the Court of Appeals will begin implementation of the plan on January 1, 2005.

## **V. CONCLUSIONS**

On March 8, 2002, the Judges of the Court of Appeals adopted the ambitious goal of disposing of 95% of all appeals filed with the Court within 18 months of filing. The Court's delay reduction plan, with the exception of changes to the court rules that would reduce the time a case spends in Intake, commenced on an overall basis in July of 2002. Through the third quarter of 2004:

- The Court reduced the average overall time it takes to dispose of an opinion case from the 2001 level of 653 days to 483 days. The Court's first objective was to reduce the time it takes to dispose of an opinion case to 497 days commencing fully on October 1, 2003. The Court therefore has exceeded its first objective.
- The Court reduced the average time a case spends in the Judicial Chambers from the 2001 level of 61 days to 31 days. The Court's first objective was to reduce the time it takes to dispose of an opinion case to 46 days in the Judicial Chambers. The Court therefore has exceeded its first objective.
- The Court reduced the average time a case waits in the Warehouse from the 2001 level of 271 days to 150 days. The Court's objective was to reduce the wait in the Warehouse to 217 days by October 1, 2003. The Court therefore has exceeded its first objective.
- The average time a case spends in Intake has been reduced from the 2001 level of 260 days to 228 days. The Court's objective was to reduce the time in Intake to 173 days commencing with the cases filed on or after October 1, 2003. Thus, the Court will need to reduce the time a case spends in Intake by another 55 days to meet its objective.
- The Court has reduced the average overall time it takes to process dependency appeals from the 2001 level of 325 days to 235 days. The recently adopted rule changes (and the ultimate adoption of the remaining proposal for changing MCR 7.210 as to the time for filing the record with the Court) will further reduce the time on appeal of TPR cases to a projected average of 167 days.

Chart 6 summarizes the Court's progress toward meeting its first objective.

**Chart 6**  
**October 2003 Objective**

	2001	2002	2003	Third Quarter 2004	Improvement To Date	First Objective	Improvement Needed To Meet First Objective
<b>Intake</b>	260	240	235	228	32	173	55
<b>Warehouse</b>	271	261	225	150	121	217	(67)
<b>Research</b>	61	62	64	74	(13)	61	13
<b>Judicial Chambers</b>	61	40	30	31	30	46	(15)
<b>Total</b>	653	603	554	483	170	497	(14)

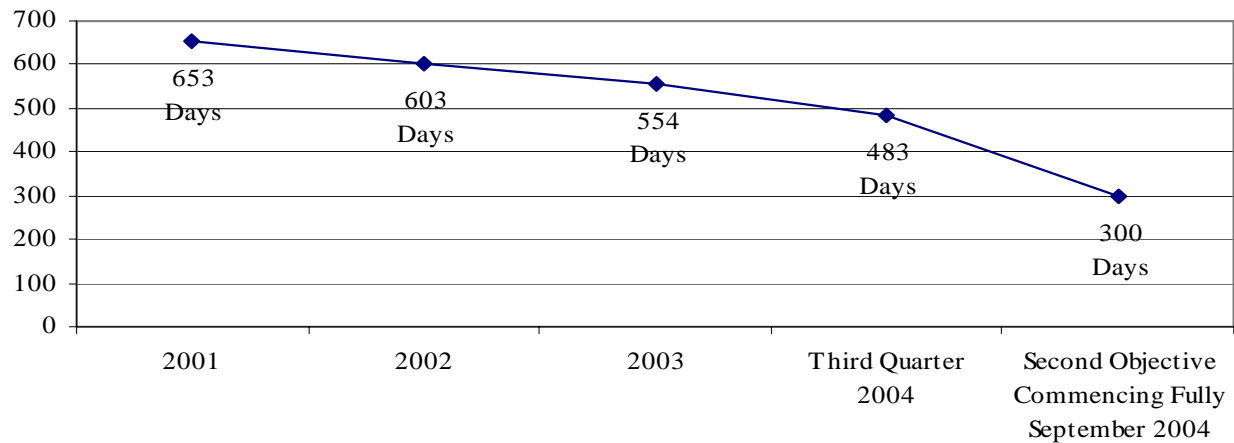
Chart 7 summarizes the additional progress that will be needed to meet the Court's second objective of reducing the time it takes to dispose of an opinion case from the 2001 level of 653 days to approximately 300 days commencing fully in September of 2004.

**Chart 7**  
**September 2004 Objective**

	2001	2002	2003	Third Quarter 2004	Improvement To Date	Second Objective	Improvement Needed To Meet Second Objective
<b>Intake</b>	260	240	235	228	32	173	55
<b>Warehouse</b>	271	261	225	150	121	0	150
<b>Research</b>	61	62	64	74	(13)	61	13
<b>Judicial Chambers</b>	61	40	30	31	30	46	(15)
<b>Total</b>	653	603	554	483	170	280	203

Graph 8 illustrates the situation from a different perspective, showing the Court's starting point in 2001, the progress the Court made through 2002, 2003, the third quarter of 2004 and the second objective to commence fully in September of 2004.

**Graph 8**  
**Progress Toward Objectives**



As mentioned in previous progress reports, the Court has established a solid base upon which it can build over the next year so that it can achieve its long-range goal of deciding 95% of all appeals within 18 months of filing. The Court's core mission is to resolve the cases pending before it with due deliberation *and* due speed. Existing Court policies and procedures are focused on ensuring due deliberation. The Court's delay reduction plan will ensure due speed through the significant reduction of delay on appeal. This is part of the Court's core mission and is, and shall remain, a first priority of the Court.